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## INCREASING METAPHOR AWARENESS IN LEGAL ENGLISH TEACHING

### Abstract

In legal language, metaphors are a fundamental way to express and apprehend abstract notions. For instance, responsibility is perceived as WEIGHT (“the burden of proof”), falsehood or unacceptability as a DECAYING LIVING BEING (“the fruit of the rotten tree”) or the law can be used as a WEAPON (“take the law into your own hands”, “use the law as a sword and not as a shield”). This has now been accepted by the academic community, which not only recognizes the value of metaphors in legal language, but has started to pay due attention to the way they operate, as witness the interesting contributions made in the field. However, this has not yet led to metaphors being incorporated as an important component of legal ESP. In our paper, we shall argue for the inclusion of metaphors in the teaching of Legal English and suggest a few sample exercises based on our teaching practice. Our intention is to prove the usefulness of this component within a complicated variety of ESP, where metaphors may both provide relief from other more intricate areas and also help learners to understand the concepts underlying such metaphors.

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### Key words

metaphors, English for Legal Purposes, legal terminology.

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## Sažetak

U jeziku prava metafore predstavljaju osnovni način izražavanja i razumevanja apstraktnih pojmova. Na primer, odgovornost se poima kao TERET („teret dokaza”), neistinitost ili neprihvatljivost kao TRULJENJE ŽIVOG BIĆA („plod trulog drveta”), dok se zakon može koristiti kao ORUŽJE („uzeti zakon u svoje ruke”, „koristiti zakon kao mač, a ne kao štit”). To je danas prihvaćeno u akademskoj zajednici, koja ne samo što shvata vrednost metafora u pravnom jeziku, već je počela i da poklanja dužnu pažnju načinu njihovog funkcionisanja, na šta ukazuju zanimljivi radovi u ovoj oblasti. To, međutim, još uvek nije dovelo do uvođenja metafora kao važnog elementa u engleski jezik pravne struke. U ovom radu zalažemo se za uključivanje metafora u nastavu engleskog jezika prava i predlažemo nekoliko primera vežbanja zasnovanih na našoj nastavnoj praksi. Namera nam je da dokažemo korist ovog elementa unutar jednog komplikovanog varijeteta engleskog jezika nauke i struke, u kome metafore mogu olakšati razumevanje drugih, složenijih, oblasti, te pomoći učenicima da shvate pojmove na kojima se takve metafore zasnivaju.

## Ključne reči

metafore, engleski jezik pravne struke, pravna terminologija.

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And he doesn't have any capital other than the fungus that grows between his toes. And if his feet are teeming with microbes, his mouth is as fresh as a head of lettuce and his tongue more tangled than a pile of seaweed.

Antonio Skarmeta, *The Postman*

## 1. METAPHOR IN ESP

Back in 1991, an issue of *English for Specific Purposes* contained an article by Seth Lindstromberg entitled “Metaphor in ESP: A Ghost in the Machine”. This title, which probably summarizes a whole attitude towards figurative language, takes us back to an era where the presence of metaphor outside literary texts was felt as a rare occurrence, and even, as we shall see later, an undesirable one. The author complained that the growing interest in metaphor in the 1980s had not been reflected in TESOL and ESP books (Lindstromberg, 1991: 208).

Plenty of studies have proved the pervasiveness of metaphor in specialized languages, and thanks to the efforts of cognitive linguists (especially after Lakoff & Johnson, 1980), it is now recognized that, rather than an aberration or an extraordinary occurrence in language, metaphors are basic for our apprehension

of the world, especially when it comes to abstract concepts (Gibbs, 1996). The lexicon of economics contains frequent metaphorical extensions of common words (Fuertes-Olivera & Velasco-Sacristán, 2001) and features both lexicalized or “dead” metaphors alongside with metaphors which never cease to appear, such as **MONEY IS SOLID**<sup>1</sup> (Silaški & Kilyeni, 2014), animal imagery in the conceptualization of inflation (Silaški & Đurović, 2010) or neologisms based on the metaphor **THE ECONOMY IS BIOLOGY** (Resche, 2002). Many authors have also pointed out the need for the analysis of metaphors from a contrastive point of view, either for language learning, for translation purposes, or simply to point out the cultural differences faced by learners. Regarding comparative studies, contributions have been made, for example, on metaphors in Spanish and English financial reporting (Charteris-Black & Ennis, 2001), or more specifically, on the **MONEY IS A LIQUID** metaphor in English, Serbian and Romanian (Silaški & Kilyeni, 2011). Even within varieties of English there are works, for example, contrasting colour metaphors in Hong Kong vs British business corpora (Lan & MacGregor, 2009: 11-15).

As regards language teaching, many have argued for the inclusion of metaphors in both general and ESP courses. Concerning the former, the interest in metaphor spurred by Lakoff and Johnson’s *Metaphors We Live By* (1980) led to studies on the effectiveness of metaphors; Deignan, Gabryś, and Solska (1997) have pointed out their ability to promote autonomous learning among advanced students, while Lazar (1996, 2003) provides various examples of exercises facilitating inferencing at various levels, Beréndi, Csábi, and Kövecses (2008) have empirically proved how conceptual metaphors and metonymies facilitate the learning of figurative idioms, and Boers (2000b) has shown how a structured awareness of source domains helps towards the retention of unfamiliar idiomatic expressions. The main argument supporting the introduction of metaphor in syllabi is put forward by Danesi (1993), who argues that foreign learners tend to lack “conceptual fluency”, i.e. while they may master the formal structures of the target language, they usually continue to “think in terms of their native conceptual system” (Danesi, 1993: 491).

All this research has led to metaphor being made a part of general English learning materials (and, in general, of any type of teaching; see Low, 2008: 216). As a result, great progress has been made since the times when teaching materials seemed to “shy away from any kind of utilization of metaphor” (Danesi, 1993: 197). On the one hand, specific language teaching handbooks have been designed based on figurative language (Lazar, 2003); on the other, vocabulary learning

<sup>1</sup> In this paper, we have used the traditional typographical conventions for metaphors, i.e. small capitals (e.g. **RESPONSIBILITY IS WEIGHT**). In-text references to words corresponding to metaphorical expressions are between inverted commas if they are in English (“under”) or in italics if they are in other languages (*bewijslast*). In the exercises proposed, bold type is used for emphasis, instead of italics, which may appear naturally in legal texts (for instance, *ordre public*, which appears in English legal instruments in italics), or inverted commas, which are also found when a legal text refers to another source.

books have recognized it as a basic component of phrasal verbs, as in McCarthy and O'Dell (2004: 14), either explicitly or under other more general labels as “abstract meanings” or “the idea of”, or with specific units on metaphors by the same authors when teaching collocations (McCarthy & O'Dell, 2008: 18-19). Even general English textbooks have also recognized it as a learning objective (e.g. Cunningham, Bell, & Redston, *Face2Face Advanced* [2009]).

As for Languages for Specific Purposes (LSP), Boers (2000a) pointed out the general need to enhance metaphor awareness in specialized reading, while the inclusion in ESP economics courses has been justified by Charteris-Black (2000), who provides corpus-based support (see also Silaški, 2011; White, 2003). Beyond economics, other practitioners have proved the need to include metaphors in engineering (Roldán-Riejos & Úbeda Mansilla, 2005) or even the specific language of wine tasting, or “winespeak” (Caballero & Suárez-Toste, 2008).

However, in legal language teaching, probably because it is a less developed field (in August 2016, a Google scholar search with “legal English” + ELT returned 507 results, as compared to 4,110 for “business English” + ELT), there seem to be no specific studies regarding figurative language in legal English, nor was there any paper on legal English metaphors in the 2009 special issue of *Ibérica*, the journal of the European Association of Languages for Specific Purposes. Such is the *status quo* in which our proposal is put forward: we shall argue the case for the inclusion of metaphor in the teaching of legal English. In the following section, a brief review of the literature on metaphor and legal language will be provided; then, a number of suggestions and potential exercises will be presented in order to increase awareness of figurative language in legal language teaching.

## 2. METAPHOR IN LEGAL LANGUAGE

A review of the literature on metaphor and legal language seems to echo the situation we described above on whether metaphor was present (at all), and if so, was acceptable in legal language; in fact, one can come across categorical statements such as Tiersma's (1999: 128) “because of the seriousness of the topic [law], we can safely assume that humor, irony, figurative usage, and similar literary devices will be avoided”. However, in the face of the undeniable presence of metaphors in legal language, the debate rather seems to focus on whether they are desirable or not. On the one hand, as has been the case in other areas (for opponents of metaphor in medical discourse see Gotti, 2015: 11), there are those who considered it “undesirable”, such as that by Judge Cardozo of the US Supreme Court, who explicitly said in 1927 that “Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it” (*Berkey v. Third Avenue Railway Co* 244 N.Y. 602), or, for instance, Anderson (1991: 1214-1215):

It [Metaphor] is useful because it is evocative, but it may evoke different ideas in different readers. It liberates the author from some of the rigidity of exposition, but also from the demands of precision and clarity. The subtlety that makes metaphor the poet's boon can be the lawyer's bane; while poetry aims to stir a personal and individual response, the law instead strives for the universal or at least the general. Legal metaphors are invaluable when they are not too imprecise or ambiguous for the task at hand. When they convey different messages to different people, however, they produce confusion, misunderstanding, and frustration.

On the other hand, most legal scholars have come to accept metaphors as an important component of legal reasoning, simply because of the all-pervasive presence of metaphor in any form of human communication (see, for instance, Murray, 1984; Winter, 2008). Indeed, metaphors say a lot about how we approach legal concepts, especially considering that law, as aptly pointed out by Orts (2015: 30), is "an ideological artefact". When it is said, for instance, that "**fundamental** rights and **fundamental** legal principles are **enshrined** in Article 6 of the Treaty" (the emphasis is ours), it is said about such rights and principles: (a) that they are sacred, comparable to deities, since a 'shrine' is a holy place consecrated to a deity, and, etymologically, (b) that society is a building whose foundations include such rights and principles. In fact, the word "foundations" is one of those cases which one might no longer perceive as a metaphor, but it has been argued that most of legal language is metaphorical, at least etymologically, including apparently non-metaphorical terms like "appeal", "prove" or "case" (Watt, 2013). Indeed, the use of the preposition "under" with legal instruments (e.g. "under Section XXX of the Act", "under the present regulations") is of a metaphorical nature, as has been aptly remembered by Larsson (2014), and even those who oppose metaphor in legal language inadvertently use metaphors: Larsson (2013: 366) points out judge Cardozo who, while warning against metaphor, uses images such as "liberate" and "enslave" as applied to thought. In general, those who criticize the use of metaphor do so only in certain contexts, or regarding specific metaphors, e.g. Oldfather (1994) criticizes the use of baseball metaphors in judicial opinions.

Thus, from a purely descriptive point of view, metaphors have been long recognized as part of the language of the law, both in general (Henly, 1987; Murray, 1984; Schane, 2006; Winter 2008), or in specific areas such as administrative law (Noah, 2000), corporate law (Berger, 2004, 2007; Greenwood, 2005), contract law (Twardzisz, 2008), constitutional law (Jackson, 2006), copyright law (Larsson, 2013), or criminal law (Duncan, 1994). Again, from a comparative point of view, the need for an awareness of metaphor is pointed out both by legal scholars (Jackson, 2006) or linguists and translators (Vegara, 2015).

Once the importance of metaphor for law, its language and its translation has been established, the following section shall explore our experience with the teaching of legal metaphors and present some exercises to enhance learners' awareness of metaphorical language in legal vocabulary.

### 3. A PILOT TEST: LEGAL METAPHORS IN EUROPEAN LANGUAGES

In order to obtain initial information on the real linguistic difficulties and implications of legal metaphors, a brief, informal test was conducted on a group of 13 European non-English-speaking judges and prosecutors during a course in English for Criminal Cooperation organized by the European Judicial Training Network (EJTN) in Lisbon including, amongst others, speakers of French, German, Dutch, Italian, Portuguese and Spanish. During the test, the participants were given the sentences below, all of them containing a metaphorical expression, and asked to translate them into their respective languages, the initial purpose being to see whether the equivalent metaphor in their languages was similar to the one in English. One of the purposes of this test was to gauge the possibility of negative transfer in metaphors (see, for instance, James, 2010).

The contexts were the following (the metaphorical expressions are shown in bold type here, but were not revealed as such to the participants):

1. In criminal cases, the **burden of proof** is placed on the prosecution.
2. The prosecutor must prove the defendant's guilt **beyond a reasonable doubt**.
3. The 1962 Convention provides that if an offense is **time-barred** in the Requested Party, extradition shall not be granted.
4. Visas are allowed **under** the Schengen agreement but **under** certain conditions.
5. Prosecutors had unlawfully threatened him with a **heavier** sentence unless he agreed to surrender himself for trial in the US.
6. There is a new legal **framework** for extradition.
7. The person concerned should be heard on the arguments, which he **invokes** against his extradition.
8. The principle of speciality is one of the traditional **tools** in the extradition framework included in the European Convention on Extradition.
9. He was not informed about the **charges** against him, which was a reason not to extradite him.
10. **Under** the EU Arrest Warrant **mechanism**, pending a decision, the executing authority hears the person concerned.

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The acceptability of the versions proposed by the learners in the target languages were verified by means of checking in reliable legal sources in each language (legal instruments, decisions by higher courts, legal doctrine, etc.), in order to rule out potential incorrect literal translations. Once the translations were checked, it was generally seen that the equivalent expressions in the participants' languages were based on the same metaphorical identifications. Indeed, it was observed that many legal metaphors have become standard in many languages, e.g. "burden of proof"



was rendered as *Beweislast* (German), *bewijslast* (Flemish/Dutch), *onere della prova* (Italian), *ónus de prova* (Portuguese), etc.; “beyond any reasonable doubt” as *oltri ogni ragionevole dubbio* (Italian), *zonder enige redelijke twijfel* (Flemish/Dutch), *além da dúvida razoável* (Port.), or *más allá de cualquier duda razonable* (Spanish). In this respect, similar results have been obtained in other experiments (e.g. Crawford Camiciottoli, 2005, who found that most economic metaphors are shared by audiences in Britain and Italy).

In our opinion, this supports our case for the inclusion of metaphors in our legal English ESP courses, since they constitute “familiar ground” and may act as confidence-boosters in what otherwise is a fairly demanding variety of the language. For this reason, in the following sections we shall propose a number of specific exercises in order to raise metaphor awareness and expand the lexical resources of legal professionals. As we shall explore in some of the exercises we will propose further on, “similar” does not mean “equal”, and our vocabulary work must emphasize the need for accuracy and the avoidance of variability.

#### 4. A FEW PROPOSALS TOWARDS INCREASING METAPHOR AWARENESS IN LEGAL ESP COURSES

In this section, we shall describe some sample exercises which may be used to raise metaphor awareness in Legal ESP, and which have been tested in courses taught to judges and prosecutors from various European countries (organized by the European Judicial Training Network). In all cases, the target audience are practising legal professionals, who are supposed to have a sufficient command of legal jargon in their own languages. However, this does not necessarily mean an “awareness” of metaphor: in many cases, professionals are not aware of the metaphors included in their own vocabulary (Larsson, 2014), either because the metaphors are lexicalized ones, or because, as we have seen earlier, in some subject areas, like law itself, the existence of metaphor is either denied or mentioned as undesirable.

The exercises proposed are to be used in the order shown here, since they progress from the general to the specific, that is, starting with the initial awareness of the existence of metaphors, then the identification of such metaphors, and then the specific use of lexical patterns. Our approach, thus, views metaphor as a cognitive event, and attempts to address its acquisition and potential problems from such point of view.

Therefore, the first step is pointing out the existence of metaphors in the users’ language. In this respect, the initial exercises differ depending on whether the audience is a monolingual one or a multilingual one; in the first case, the exercises may start from the learners’ own language, whereas in the case of multilingual learner groups, other strategies must be used. For instance, what follows could be an initial task for a Spanish-speaking group of legal professionals,

developed on the basis of those proposed for general English and Polish speakers by Deignan et al. (1997: 356):

### Exercise 1

*Read the following text, extracted from a ruling from the Spanish Supreme Court (Tribunal Supremo). Is there something in common among the words and expressions in bold type?*

Las **personas jurídicas** de Derecho público no son titulares del **derecho** al honor que **garantiza** el art. 18.1 de la C.E. Respecto de ellas, se **predican** otros **valores** que pueden ser **tutelados** por el legislador, como la dignidad, el prestigio y la autoridad moral. No obstante, las personas jurídicas privadas en un **sentido amplio**, que **abarca** a asociaciones, partidos políticos, sindicatos y fundaciones, sí **gozarían** de este derecho.

*Sentencia Tribunal Supremo, Sala de lo Civil, 408/2016, 15/06/2016*

English translation of the text, with figurative expressions in bold type:

**Legal persons** in Public Law do not possess a **right** to honour as **provided** (literally: “guaranteed”) by Article 18.1 of the Spanish Constitution. Concerning such persons, other **values** are **provided** (literally: “preached”) which may be **protected** (literally: “guarded”) by the legislator, such as dignity, good name and moral authority. However, private legal persons in **a broad sense, including** (literally: “covering”) associations, political parties, trade unions and foundations, do **possess** (literally: “enjoy”) such right.

Immediately after this exercise, or as an initial exercise if the group is a multilingual one, a similar fragment may be proposed containing metaphors. Ideally, the example chosen should be very familiar to the learners, which would serve a double purpose: on the one hand, it would prove relevant to their professional practice, and on the other, it would show them to what extent they have been exposed to, and using, figurative language without realizing. The following example was given to the judges and prosecutors attending a course on the language of human rights, based on the fact that most of the metaphors were common to their native languages, the purpose being to make them aware that both the English expressions and their counterparts in each language are of a figurative nature:

### Exercise 2

*What is special about the words and expressions in this fragment from the Tampere conclusions of October 1999 regarding immigration policy?*

The European Union needs a comprehensive **approach** to migration **addressing** political, human rights and development issues in countries and regions of origin and transit. This requires **combating** poverty, improving living conditions and job opportunities, preventing conflicts and **consolidating** democratic states and ensuring respect for human rights, in particular rights of minorities, women and children. To that end, the Union as well as Member States are **invited** to contribute, within their respective competence **under** the Treaties, to a greater coherence of internal and external policies of the Union. Partnership with third countries concerned will also be a **key** element for the success of such a policy, with a **view** to promoting co-development.



Another awareness-creating exercise, which may also foster cross-cultural reflection, is the following one, modelled after Lazar (2003: 9):

### Exercise 3

**Working in pairs, discuss these questions, and compare the answers to what is said in your respective native languages.**

- a) How is to *follow* procedure the same as to *follow* someone in the street?
- b) How is *access* to justice the same as *access* to a building?
- c) If a judge is deaf, can he or she *hear* a case?
- d) When jurors are given *directions*, do they go anywhere?
- e) Why do claimants ask for a *remedy*, if they are not sick?
- f) How can a statutory requirement be *inflexible* if it is an abstract concept?
- g) When it is said that legalizing drugs would put us on a *slippery slope*, are we likely to have a fall or suffer a physical injury?
- h) If the *burden* of proof is on the prosecution, do they need to be physically strong to carry it?

A problem for teaching metaphor is that the explanation may also be based on a metaphor, as pointed out by Deignan (2003); also, the same identification between source and target domain (e.g. A CORPORATION IS A HUMAN BEING) may lead to different metaphors, such as “legal person”, “in the company’s hands”, etc. With this in mind, an initial type of exercise may be developed in which the purpose is not the specific wording of a metaphor, but the underlying identification of the abstract concepts, or in other words, the source domain. In general, and as we pointed out earlier, this task may boost the learners’ confidence, since, at least in Western cultures, the legal metaphors are very similar (which eliminates one of the obstacles mentioned by Danesi [2003: 77], for whom asymmetry between conceptual frameworks is inimical to “naturalness” in student discourse). For this purpose, the following two exercises try to help learners to identify specific source domains:

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### Exercise 4

**The following sentences, all from US Supreme Court cases, contain words and expressions related to war, fighting and struggling. Which are they? The first one has been done for you.**

- a) Our starting place was not the same as that of advocates seeking the aid of the courts in the **struggle** against race discrimination.
- b) Accepting a case for review includes the existence of a conflict between the decision of which review is sought and a decision of another appellate court.
- c) The defendant fought some of the land-use and trespass citations.
- d) Plaintiffs previously defeated in state court filed suit in a Federal District Court.
- e) In clashes of governmental authority there was small risk that the state courts would find for the Federal Government.
- f) The Court confronted Nebraska’s argument that the procedure was safer.
- g) The defence attacked the verdicts on appeal as inconsistent and urged a reversal of the convictions.
- h) The plaintiff was armed with all the information that he needed to file a federal complaint.
- i) Guzek’s defense rested in part upon an alibi.
- j) The measure that invades privacy is the subject to a Fourth Amendment challenge.

Once an initial understanding of metaphor has been gained – trying to restrict technical language to a minimum – and after a brief explanation to learners of what metaphors are and the fact that they are all based on identifications between two fields (e.g. REASONING IS MOVEMENT), the following exercise explicitly asks them to classify expressions into metaphorical patterns:

#### Exercise 5

*The following fragments, all from Supreme Court opinions, contain metaphorical expressions. Classify them according to the underlying imagery. The first ones in each category have been done for you.*

- a) ~~28 U. S. C. §1254(1)'s grant of appellate jurisdiction does not give this Court license to depart from an established review standard.~~
- b) ~~A statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum.~~
- c) ~~Because the reasoning of *Cooley* and *State Freight Tax* has been rejected entirely, they provide no foundation for today's decision.~~
- d) ~~Does the constitution of the United States act upon him whenever he shall be made free under the laws of a State [...], and immediately clothe him with all the privileges of a citizen in every other State?~~
- e) Furthermore, no "clear notice" prop is needed in this case given the twin **pillars** on which the Court's judgment securely rests.
- f) It does not **follow** that the rights can be disregarded so long as the trial is, on the whole, fair.
- g) *Oregon v. Elstad*, 470 U. S. 298, reflects a balanced and pragmatic **approach** to enforcing the Miranda warning.
- h) Regulations approved under *Montana* all **flow** from these limited interests.
- i) ~~Such "wilful misconduct" is best read to be included within the realm of conduct that may constitute an "accident" under Article 17.~~
- j) The CDC will have the burden of demonstrating that its policy is narrowly **tailored** with regard to new inmates as well as transferees.
- k) The challenge lies in ensuring that the **flood** of non-meritorious claims does not submerge and effectively preclude consideration of the allegations with merit.
- l) The DSL, by placing sentence-elevating factfinding within the judge's **province**, violates a defendant's right to trial by jury.
- m) The Government insists that *Jenkins* found paralegal fees recoverable under the **guise** of "attorney's fee[s]".
- n) The issue is whether the sentencing jury had been unable to give effect to [Cole's] mitigating evidence within the **confines** of the statutory 'special issues.'
- o) The judgment does not constitute a forbidden intrusion on the **field** of free expression.
- p) The **starting point** in discerning congressional intent, however, is the existing statutory text.
- q) The **structure** of the statute also suggests that subsection (iii) is not limited to the intentional discharge of a firearm.
- r) Thus **cloaked** in the "purpose" of the Commerce Clause, the rule against discrimination that the Court applies to decide this case exists untethered from the written Constitution.
- s) To resolve these challenges a hearing officer must make a decision **based** on whether the child "received a free appropriate public education."
- t) Turning a blind eye to federal constitutional error that benefits criminal defendants, allowing it to **permeate** in varying fashion each state Supreme Court's jurisprudence, would change the uniform "law of the land".

**Exercise 5 cont.**

LEGAL ACTIONS AND JURISDICTIONS ARE A PHYSICAL SPACE

i) Such “wilful misconduct” is best read to be included within the **realm** of conduct that may constitute an “accident” under Article 17.

—) \_\_\_\_\_  
 —) \_\_\_\_\_  
 —) \_\_\_\_\_

REASONING IS MOVEMENT

a) 28 U. S. C. §1254(1)’s grant of appellate jurisdiction does not give this Court license to **depart from** an established review standard.

—) \_\_\_\_\_  
 —) \_\_\_\_\_  
 —) \_\_\_\_\_

LEGAL PROCEDURES AND INSTRUMENTS ARE CLOTHES

d) Does the constitution of the United States act upon him whenever he shall be made free under the laws of a State [...], and immediately **clothe** him with all the privileges of a citizen in every other State?

—) \_\_\_\_\_  
 —) \_\_\_\_\_  
 —) \_\_\_\_\_

LEGAL IDEAS AND INSTRUMENTS ARE PHYSICAL BUILDINGS

c) Because the reasoning of *Cooley* and *State Freight Tax* has been rejected entirely, they provide no **foundation** for today’s decision.

—) \_\_\_\_\_  
 —) \_\_\_\_\_  
 —) \_\_\_\_\_

LEGAL PROCESSES AND RELATIONSHIPS ARE LIQUIDS

b) A statute dealing with a narrow, precise, and specific subject is not **submerged** by a later enacted statute covering a more generalized spectrum.

—) \_\_\_\_\_  
 —) \_\_\_\_\_  
 —) \_\_\_\_\_

Once the metaphorical domains have been established, it is explained to the students that the identification made by the metaphor results in a given expression or collocation. With this information, a further exercise may concentrate on the specific lexical embodiment of each metaphor:

## Exercise 6

*Please fill in the gaps in the following sentences with the words given, and then match the metaphorical identification to the expression resulting from it. The first one has been done for you.*

**Missing words:**

burden, clash, core, distance, fuel, gratuitous, outweigh, propagate, proportionality, undermine

**Metaphors:**

AN IDEA IS A (FLESHY) FRUIT WITH SEEDS

AN IDEA IS A LIVING BEING WHICH CAN REPRODUCE ITSELF

CONFLICTING LAWS ARE VEHICLES COLLIDING WITH EACH OTHER

FINDING EVIDENCE IS HEAVY

HUMAN ACTIONS ARE VEHICLES

IMPORTANT THINGS ARE HEAVIER THAN LESS IMPORTANT THINGS

SOCIETY IS A BUILDING

UNNECESSARY THINGS HAVE NO MONETARY VALUE

TO AGREE IS TO BE TOGETHER, TO DISAGREE IS TO BE SEPARATED

WHEN SOMETHING IS SUITABLE, IT HAS THE RIGHT SIZE

- a) The existence of regulations relating specifically to publications of foreign origin would seem, in the Court's view, to **clash** head on with the wording of paragraph 1 of Article 10 of the Convention. **(CONFLICTING LAWS ARE VEHICLES COLLIDING WITH EACH OTHER)**
- b) It was held that it was not clear that the need to satisfy the public's concern to know the truth may \_\_\_\_\_ the need to protect national security. (\_\_\_\_\_)
- c) ...it thus enables everyone to participate in the free political debate which is at the very \_\_\_\_\_ of the concept of a democratic society. (\_\_\_\_\_)
- d) The purpose of the report could not objectively be regarded as having been to \_\_\_\_\_ racist ideas and opinions. (\_\_\_\_\_)
- e) There was no proof that the description of events given in the articles was totally untrue or calculated to \_\_\_\_\_ a defamation campaign. (\_\_\_\_\_)
- f) The suspect, a known right-wing extremist, was also suspected of attempts to \_\_\_\_\_ democratic society. (\_\_\_\_\_)
- g) In the Court's view the editorial could be considered polemical but did not constitute a \_\_\_\_\_ personal attack, as the author gave an objective explanation. (\_\_\_\_\_)
- h) A journalist had been convicted of failing to impart fair information by quoting excerpts from an article that questioned the honesty of a body of civil servants, where the journalist did not \_\_\_\_\_ himself from the comments. (\_\_\_\_\_)
- i) A judgment that Article 10 had not been violated was delivered in the McVicar case, concerning the \_\_\_\_\_ of proof placed on a journalist and his conviction of defaming a sportsman by accusing him of using illegal performance-enhancing drugs. (\_\_\_\_\_)
- j) As the case involved a restriction of freedom of expression in a matter of public interest, the Court carefully considered the \_\_\_\_\_ of the measures imposed. (\_\_\_\_\_)

However, it is also necessary to address the specific wording of each metaphor, given the highly idiomatic (and therefore, often invariable) nature of some metaphorical expressions. It is true that there are rare exceptions where there may be lexical flexibility in metaphorical expressions, e.g. it is possible to call evidence illegally gathered "the fruit of the rotten tree", but also of the "poison tree" and even of the "poisonous tree", but in general, metaphorical expressions, like many

idioms in general, often do not allow for lexical flexibility (see, for instance, Gibbs, Nayak, Bolton, & Keppel, 1989; Glucksberg, 1993: 19-23); for instance, “under” may not be replaced by “beneath” in *\*beneath Section XX of the Act*, or “barred” may not be replaced by “prohibited” or “banned” in *\*time-prohibited* or *\*time-banned*. This is where two types of exercises may be prepared: the first type would be simple matching or gap-filling tasks, but also specific error prevention exercises. The matching task could take the following shape:

**Exercise 7**

*In each of the sentences, taken from the Council of Europe Convention on Cybercrime, choose the correct word from the options given, considering the metaphorical identification in brackets in each case. Only one answer is correct.*

<p>1. A Party may reserve the right not to impose criminal liability under paragraphs 1 and 2 of this article in limited circumstances, provided that other effective _____ (CRIME IS A DISEASE) are available.</p>	<p>a) cures b) medicines c) remedies</p>
<p>2. Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal _____ (CORPORATIONS ARE HUMAN BEINGS) can be held liable for a criminal offence established in accordance with this Convention.</p>	<p>a) persons b) individuals c) beings</p>
<p>3. Each Party shall _____ (LEGAL MEASURES ARE CHILDREN) such legislative and other measures as may be necessary to establish as criminal offences under its domestic law.</p>	<p>a) father b) engender c) adopt</p>
<p>4. ... other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 2 through 11 are punishable by effective, _____ (FAIRNESS IS APPROPRIATE SIZE) and dissuasive sanctions, which include deprivation of liberty.</p>	<p>a) proportionate b) proportional c) commensurate</p>
<p>5. ... each Party shall consider the _____ (EFFECTS ARE PHYSICAL BLOWS) of the powers and procedures in this section upon the rights, responsibilities and legitimate interests of third parties.</p>	<p>a) strike b) blow c) impact</p>
<p>6. Each Party shall adopt such measures as may be necessary to establish jurisdiction _____ (CONTROL IS UP, THINGS CONTROLLED ARE DOWN) the offences referred to in Article 24.</p>	<p>a) above b) over c) aloft</p>
<p>7. If the receiving Party accepts the information subject to the conditions, it shall be _____ (OBLIGATIONS ARE PHYSICAL RESTRAINTS) by them.</p>	<p>a) bound b) tied c) fastened</p>
<p>8. Subject to the provisions of paragraph 2, this assistance shall be governed by the conditions and procedures provided for _____ (CONTROL IS UP, THINGS CONTROLLED ARE DOWN) domestic law.</p>	<p>a) beneath b) below c) under</p>

Regarding the error prevention exercise, a similar task may be proposed where the word may be based on the underlying metaphor, but the lexical embodiment is wrong. Both this one and the previous task help learners to learn the specific form used, but also in general to understand that these are fixed idiomatic expressions

(the students are told that words may not be replaced by synonyms, etc.), and as such may not be modified lexically or syntactically:

#### Exercise 8

*In the following sentences, the words in bold type are wrong, although these words are based on the same comparison. Replace the word by the correct one. The first one has been done for you.*

- When you use the law in order to make life miserable for other people and not to protect yourself, you use law as a(n) **gun sword**, rather than a(n) **armour**\_\_\_\_\_.
- Someone who does not trust legal procedures and decides to act against other people who may have caused them harm are **wielding**\_\_\_\_\_ the law into their own **arms**\_\_\_\_\_.
- If a jury is completely sure that a defendant is guilty, they consider that he/she is guilty **outside**\_\_\_\_\_ a reasonable doubt
- He has been **loaded**\_\_\_\_\_ with aggravated murder.
- The original decision was **inverted**\_\_\_\_\_ by the appeal court.
- The victims agreed not to **push**\_\_\_\_\_ charges if offered compensation.
- Sentencing **directions**\_\_\_\_\_ help judges decide the appropriate sentence for a criminal offence.
- The European Courts have prohibited discrimination on **lands**\_\_\_\_\_ of sexual orientation.

#### Exercise 9

*Rewrite the following sentences using the words given, considering the metaphors in each case. The first one has been done for you.*

- The law treats everybody equally.  
**eyes** (THE LAW IS A HUMAN BEING + JUDGING IS LOOKING)  
\_\_\_\_\_  
**We are all equal in the eyes of the law**\_\_\_\_\_
- A legislative or executive act can be challenged because it is unconstitutional.  
**grounds** (ACTIONS ARE BUILDINGS, ARGUMENTS AND IDEAS ARE LAND)  
\_\_\_\_\_
- The Constitutional court has assessed the importance of all the arguments.  
**weighed** (IMPORTANCE IS WEIGHT)  
\_\_\_\_\_
- The current human rights doctrine is the result of the decisions of the European courts.  
**shaped** (IDEAS ARE TRIDIMENSIONAL OBJECTS)  
\_\_\_\_\_
- The court's ruling does not coincide with the previous case law.  
**departs** (LEGAL TRADITIONS ARE JOURNEYS)  
\_\_\_\_\_
- The judgment was considered not valid by the Court of Appeal.  
**set aside** (LEGAL DECISIONS ARE PHYSICAL OBJECTS)  
\_\_\_\_\_

Another issue which greatly influences the approach is the type of audience at which the exercises (and the materials) are addressed. Given the great specialization of the legal profession, a careful selection of the metaphors might be performed, since, for instance, some metaphors might be irrelevant to lawyers specializing in family law.



However, even in those cases, a two-level approach may be used, in which introductory exercises might show general legal metaphorical expressions which might be known to all legal professionals regardless of the area (e.g. “the long arm of the law”, “take the law into your own hands”), and then a specialized exercise might deal with those specific to each area. For instance, a course addressed at lawyers specializing in copyright law might present the metaphors pointed out by Larsson (2013), or another dealing with cybercrime might work on metaphors dealing with THE INTERNET IS A PHYSICAL SPACE (“cyberspace”, “domain”, “deep web”, “dumpster diving”), CYBERCRIME IS PHYSICAL AGGRESSION (“cyberattack”, “cyberbullying”, “brute force attack”, “logic bomb”, “mail bombing”), etc.

## 5. CONCLUSIONS

The starting point of our paper was the need to translate theory into practice: if it is now accepted by both linguists and legal scholars that legal language is metaphorical and that metaphors are basic to understanding law and language, it naturally follows that metaphors must be integrated into LSP courses and language learners must be aware of the figurative component of legal language. In our case, the inclusion of metaphors in the syllabus of intensive courses in English for legal cooperation was perceived as beneficial in all cases: where they coincided in different languages, they provided “familiar ground” making learners more comfortable with legal English; where they did not coincide, it ensured correct acquisition with reduced negative transfer; and in both cases, an awareness of figurative language helped the learners to structure their input in comparison with their native languages.

In the case of legal metaphors, both our pilot study and the usage of the above activities with legal practitioners from various European countries seem to show that the conceptual basis of Western law is largely multilingual, and that most usual metaphors seem to coincide: therefore, language work should concentrate on non-variability and specific wording, e.g. ensuring correct word choices (“burden”, not “charge” or “weight”) and correct collocations (“burden” collocates with “heavy”, “carry”, “bear”).

Also, in those courses whose purpose is twofold, i.e. language and content, reflection on metaphor contributes to a better understanding of legal concepts, and also to dialogue and discussion in multinational classes. We tend to agree with Danesi (1993) for whom metaphorical encoding is largely unconscious, and therefore it is necessary to create an awareness of such content. Thus, it has been found that learners enjoy becoming aware of lexicalized metaphors, such as the traditional imagery underlying the English legal system including identifications such as LAW IS A PERSON, ACTIONS ARE MOTIONS, CONTROL IS UP/THINGS CONTROLLED ARE DOWN, RIGHTS (AND OTHER LEGAL RULES) ARE PATHS, RATIONAL ARGUMENT IS WAR and RIGHTS ARE POSSESSIONS (Winter, 1989) or contrasts between languages (TRYING CASES IS

HEARING in English vs. TRYING CASES IS SEEING in other languages). Judges and prosecutors in the aforementioned courses rapidly became familiar, through the exercises proposed, with the correct metaphors in English, but also commented with each other on their respective national metaphors, which supported one of the aims of these courses entitled “English for judicial cooperation” (for more discussion on these courses and English as a lingua franca in European legal cooperation, see Campos, 2010).

Regarding difficulties encountered and further research avenues, it must be emphasized that the selection of metaphors is a potentially problematic issue, since some metaphors may pertain to general or argumentative discourse, and not specifically to legal language (e.g. IMPORTANCE IS WEIGHT). Thus, when preparing English for Legal Purposes materials, time and space constraints should be considered, and specific criteria might be applied to metaphor selection. For instance, in general law courses, lexicographical repertoires might be the guiding criterion (“is the expression included in legal dictionaries?”), whereas corpora and/or native legal experts could be used in order to decide inclusion in specialized courses. Also, new insights might be gained by expanding the source materials for metaphors to more informal materials, such as academic journals, in order to check for potential variation, which would in turn be relevant for training purposes (e.g. if the exercises are addressed at academics desiring to write papers in English), or by exploring metaphor quantitatively in legal corpora (following the methodology developed, for instance, by Breeze [2015]).

Another interesting area for further research which has emerged during classroom sessions, half-way between ESP and comparative lexicography, is the prescriptivism vs. descriptivism debate, i.e. whether the “correct” metaphor in some languages is the “genuine” one, or the one that has become usual because of the influence of English. For instance, in English doubt is conceived as a BOUNDARY, and hence the expression “beyond a reasonable doubt”. In some Western languages, a coexistence can be observed of this notion (Port. *além da dúvida razoável*, It. *oltre ogni ragionevole dubbio*, Sp. *más allá de cualquier duda razonable*) with the more “traditional” DOUBT IS A THREE-DIMENSIONAL SPACE, as seen in Port. *fora de qualquer dúvida razoável*, It. *fuori da ogni ragionevole dubbio*, Sp. *fuera de cualquier duda razonable*. In this area, it might be interesting, through the development of diachronic corpora, to see what the evolution of the expressions has been in these languages, and to what extent the English metaphor has become the prevailing one.

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